IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

W.P. No. 696 of 2002 (S/B)

Surendra Singh …….. Petitioner

Versus

Union of India & others …….. Respondents

Mr. Pankaj Purohit, learned counsel for the petitioner.
Mr. Rakesh Thapliyal, learned Standing Counsel, Union of India.

Hon. P.C. Verma, A.C.J.
Hon. P.C. Pant, J.

This writ petition has been filed by the petitioner seeking a writ of certiorari to quash the orders dated 29.7.1999 (Annexure 5) and 2.11.1999 /19.11.1999 (Annexure 6) passed by respondents No.3 & 2 respectively as well as the order dated 25.02.2002 passed by respondent No. 4 i.e. Central Administrative Tribunal, Allahabad Bench, Allahabad (Annexure 7).

Heard Mr. Pankaj Purohit, learned counsel for the petitioner and Mr. Rakesh Thapliyal, learned Standing Counsel for the Union of India.

Vide order dated 25.02.2002, the Central Administrative Tribunal has dismissed the O.A. No. 51 of 2001 (U) filed by the petitioner under Section 19 of the Administrative Tribunal Act, on the ground of delay. The Tribunal has not condoned the delay as the Tribunal did not find the reasons given by the petitioner in the application under Section 21(3) of the Administrative Tribunal Act, to be satisfactory for condonation of delay.

The petitioner, in the application under Section 21(3) of the Administrative Tribunal Act, has stated that the petitioner could not file the O.A. within time for the reasons that no subsistence allowance was paid to the petitioner during suspension, therefore, he could not challenge the dismissal order due to economic hardship.

Learned counsel for the petitioner has relied on a judgment in the case of Jagdamba Prasad Shukla Vs State of U.P. & others

reported in 2000(7) SCC 90, in which the Hon'ble Apex Court has set aside dismissal order on the ground of non-payment of subsistence allowances and held that non-payment of subsistence allowance deprived the petitioner from putting his full defence.

The ration of the aforesaid judgment applies to the facts of this case. We agree with the submission made by the learned counsel for the petitioner.

Therefore, we set aside the order dated 25.02.2002 passed by respondent No. 4 i.e. Central Administrative Tribunal, Allahabad Bench, Allahabad. Accordingly, we condone the delay in filing the O.A. No. 51 of 2001 (U) and allow the application under Section 21(3) of the Administrative Tribunal Act. Central Administrative Tribunal, Allahabad is directed to decide the O.A. No. 51 of 2001 (U) on its own merit expeditiously as early as possible.

(P.C. Pant, J.) **(P.C. Verma, A.C.J.)**

Dt. 08.07.2004
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